

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Notice of Inquiry Concerning a Review of the)
Equal Access and Nondiscrimination Obligations)
Applicable to Local Exchange Carriers)

CC Docket No. 02-39

**THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ hereby files its initial comments in the above-captioned proceeding.²

I. INTRODUCTION

On February 19, 2002, the Commission adopted a Notice of Inquiry (NOI) to examine the continued importance of the equal access and nondiscrimination obligations contained in section 251(g) of the Act. Specifically, the Commission seeks to determine whether it should change or eliminate any existing equal access and nondiscrimination requirements that apply to incumbent local exchange carriers (ILECs) in light of the new competitive paradigm contemplated by the Act.

II. THE COMMISSION SHOULD STRIVE FOR REGULATORY PARITY WHEN

¹ NTCA is a non-profit corporation established in 1954 and represents 545 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Communications Act of 1934, as amended (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Notice of Inquiry Concerning the Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, FCC 02-57 (rel. February 28, 2002)(NOI).

DECIDING THE FUTURE OF EQUAL ACCESS

Today, rural ILECs are required to provide consumers with equal access to long distance carriers and their services.³ Wireless carriers are not required to and do not offer equal access. As a result, wireless carriers have a distinct competitive advantage in that they can compete directly against rural ILECs without incurring the additional cost of providing equal access. This regulatory disparity is inconsistent with the Commission's goal of minimizing disparities so that "no entity receives an unfair competitive advantage that may skin the marketplace."⁴ This discrepancy is also contrary to the Commission's goal "to establish a modern equal access and nondiscriminatory regulatory regime that will benefit consumers."⁵ The Commission should therefore strive to correct this inequity when determining the future of equal access.

Equal access provides consumers with the direct benefits of being able to conveniently choose any long distance provider offering services in their community without switching their local phone company. It also stimulates long distance services competition in rural communities because all long distance providers know they have direct access to the consumer. As NTCA previously stated in its comments concerning the redefinition of universal service, equal access should be added to the list of services that are eligible for universal service support.⁶ It fits squarely into the universal service criteria put forth in Section 254(c) of the Act and provides immediate and tangible benefits to the American public.⁷

3 Section 251(g).

4 *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8802 (1997).

5 NOI, ¶ 2.

6 NTCA's Initial Comments filed in CC Docket No. 96-45, FCC 01-J-1 (Nov. 13, 2001).

7 47 U.S.C. § 254(c).

Requiring all competitive local exchange carriers (CLECs) to offer equal access would help reduce the current regulatory disparity between ILECs and wireless CLECs. It would also assist the Commission in ensuring that no entity receives an unfair competitive advantage as a result of regulatory requirements and costs associated with providing equal access. In addition, extending the equal access requirements to wireless CLECs would move the Commission closer to a modern regulatory regime and competitive paradigm that provides greater public benefits through the ability of consumers to comparison shop for competitive long distance services on both their wireline and wireless phones. For these reasons, the Commission should carefully consider establishing equivalent regulatory requirements on ILECs and CLECs when deciding the future of equal access.

III. THE COMMISSION SHOULD SUSPEND PORTABILITY PROVISIONS IN THE ICLS RULES PENDING A DECISION ON EQUAL ACCESS

The Commission's new Interstate Common Line Support (ICLS) mechanism replaces the Carrier Common Line (CCL) charge that rate-of-return (ROR) ILECs used to recover costs related to providing long distance providers access to their networks for long distance services and other interexchange services.⁸ The ICLS mechanism provides support equal to the interstate loop costs that ROR ILECs do not recover through revenues from subscriber line charges (SLCs) and other common line charges. Because rural ILECs are required to provide equal access, the cost associated with providing this service is directly related to the amount of ICLS each carrier

⁸ *In the Matter of the Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers* CC Docket 00-256, *Federal-State Joint Board on Universal service* CC Docket 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation*, CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services for Local Exchange Carriers*, CC 98-166, FCC 01-304, ¶¶ 142-178 (rel. November 8, 2001)(MAG Order).

receives under the new ICLS mechanism.

Under the Commission's new ICLS rules, effective July 1, 2002, competitive eligible telecommunications carriers (CETCs) will become eligible to receive ICLS support, not based on their own cost to provide IXCs access to their networks, but based on the rural ILEC's cost to provide access service. CETCs will be eligible for the identical amount of per-customer ICLS that rural ILECs receive for customers residing in their study area. Unlike rural ILECs, Wireless CETCs do not provide the same interstate access services to consumers, use the same facilities to provide the services, or incur the same costs for providing the services. In fact, wireless CETCs incur virtually none of the interstate access costs relevant to the ICLS mechanism because they have no wireline local loops on which the mechanism is based. Moreover, the cost to provide interexchange carriers (IXCs) access to wireless networks is generally less than the rural ILEC's cost because the wireless carrier can resell the long distance services of an exclusive IXC at volume discounts to its captive customers. Conversely, rural ILECs must provide nondiscriminatory equal access to all customers and all IXCs and cannot get the same favorable discounts through an exclusive contract with an IXC.

Wireless CETCs with no loop costs and no lines *per se* will be able to receive the same per line support as rural ILECs that have enormously expensive 10, 15, 30, 40 or 50 mile loops merely by filing customer lists that consist in some cases of no more than the customers' billing address. The Commission never assumed that multiple carriers would receive the same support. Indeed, the ICLS identical support rule defeats the purposes the Commission intended when it adopted "competitive neutrality" as an additional principle to those stipulated in Section 254(b)

of the Act.⁹ As the Commission explained in 1997, its policy was intended to “ensure that no entity receives an unfair competitive advantage.”¹⁰ The Commission’s policy, however, was based on assumptions that have not been borne out over the course of five years. For example, the Commission stated in 1997 that a CETC could not profit if it had lower costs because it must “provide service and advertise its service throughout the entire service area, consistent with Section 214(e). . . .”¹¹ As a result of subsequent state and Commission action, CETCs are currently not required to provide service throughout entire rural telephone company service areas.¹² In South Dakota, for example, it is not even necessary to serve a single customer to become certified under Section 214(e). Commission rules permit CETCs to file loop counts regardless of whether they have loops and whether they serve only the one most profitable

9 The Commission defined competitive neutrality to require that universal support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another or one technology over another. *See, Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8801 (1997).

10 *Id.*, p. 8802.

11 *Id.*, p. 8933.

12 *In the Matter of the Federal-State Joint Board on Universal Service, Petition for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket 94-65, FCC 01-311, (Oct. 19, 2001); *In the Matter of the Federal-State Joint Board on Universal Service, Petition for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of South Dakota*, Declaratory Ruling, CC Docket 94-65, FCC 00-248 (Aug. 10, 2000); *In the Matter of Western Wireless Corporation’s Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, FCC 00-309 (Aug. 28, 2000); *In the Matter of the Minnesota Cellular Corporation’s Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P-5695/M-98-1285 (Oct. 27, 1999); *In the Matter of the Application of GCC License Corporation Seeking Designation as an Eligible Telecommunications Carrier in the State of Nebraska*, Application No. C-1889 (Nov. 21, 2000); *In the Matter of the Application of GCC License Corporation Seeking Designation as an Eligible Telecommunications Carrier in the State of Oklahoma*, Order No. 450765 (Nov. 21, 2000); *In the Matter of the Application Western Wireless Corporation Seeking Designation as an Eligible Telecommunications Carrier in the State of Texas*, PUC Docket No. 22289 (Oct. 30, 2000); and *In the Matter of the Application United States Cellular Seeking Designation as an Eligible Telecommunications Carrier in the State of Washington*, Docket No. UT-970345 (Dec. 30, 1999).

customer or all.¹³

The “competitive neutrality” principle was predicated on the assumption that the public would benefit from the efficiencies that result from competition. The identical ICLS support rule was summarily adopted on the same assumption.¹⁴ There is no evidence that efficiencies have been gained by application of the competitive neutrality principle to the high cost support rule or that they will be gained by the identical ICLS support rule. As NTCA stated in its petition for reconsideration, ICLS has no relationship to the cost of CETCs that are not rate-of-return regulated and the Commission cannot determine whether they will receive support in excess of their total per line costs.¹⁵ The fact remains that the identical ICLS rule violates Section 254(e) which requires that a “carrier that receives such support shall use that support for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

IV. CONCLUSION

The current ICLS rules ignore a CETC’s costs as well as the fact that many do not offer equal access.¹⁶ The Commission’s lopsided equal access regulations and the impending distribution of the identical support under the ICLS rules will continue to further aggravate the regulatory disparity between rural ILECs and wireless CETCs creating an even greater competitive advantage for wireless CETCs in the local exchange marketplace. The Commission should therefore suspend application of the identical support portability provisions in the ICLS rules until it has completed its review of the equal access requirements and its definition of

13 *See, In Re Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 2001 SD 32, (South Dakota Supreme Court March 14, 2001), also see 57 C. F.R. § 54.307(b).

14 MAG Order, ¶151.

15 NTCA Petition for Reconsideration, CC Docket 00-256, pages 3-5 and 7-9.

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competitive neutrality. A suspension of the ICLS portability provisions will allow the Commission time to assess the overall effect of any changes to the equal access requirement on universal service support and its ability to comply with Section 254(e) before implementing the revised ICLS rules. Suspending now instead of later will also prevent the harm and waste that will occur if the ICLS rule becomes effective in July 2002.

Respectfully submitted,

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May 10, 2002

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 02-39, FCC 02-57 was served on this 10th of May 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail C. Malloy

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